

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of Regulatory Requirements for	)	CC Docket No. 01-337
Incumbent LEC Broadband	)	
Telecommunications Services	)	

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

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April 22, 2002

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**I. Introduction**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) files these replies in response to comments filed in the above-noted proceeding.<sup>1</sup> OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). Most of OPASTCO's member carriers are either presently offering, or are preparing to offer, broadband or high-speed services to their customers. OPASTCO supports the Commission's consideration of streamlined regulatory requirements for incumbent local exchange carriers' (ILECs) provision of

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<sup>1</sup> *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, CC Docket No. 01-337, FCC 01-360 (rel. Dec. 20, 2001) (NPRM).

advanced services. However, as the Commission moves forward in this proceeding, OPASTCO urges it to retain small ILECs' option to utilize an effective pooling mechanism, which is essential for many of these carriers to provide advanced services.

**II. While small ILECs' circumstances are diverse, many find that pooling is a necessary component to the provision of advanced services**

In the NPRM, the Commission wisely posits that it "should be guided by a full understanding of the existing market dynamics for broadband services."<sup>2</sup> The Commission has undertaken a necessary but daunting task. The economic and market conditions experienced by small ILECs vary widely, and regulatory requirements and classifications that might impede the efforts of some rural carriers to provide advanced services in high-cost areas might prove beneficial to others. This mixed result occurs in the case of tariffing advanced services, specifically those delivered via digital subscriber line (DSL) technology.

The NPRM states that dominant carrier regulation includes rate regulation and tariff filing requirements.<sup>3</sup> Many rural carriers participate in revenue pools administered by the National Exchange Carrier Association (NECA), which files tariffs that are charged by all pool participants. Pooling involves risk sharing and the matching of revenues to costs. It allows participants to reduce the volatility of their individual company revenues by dissipating those risks across numerous carriers. It is important to note that for many small ILECs, deployment of advanced services would not be viable

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<sup>2</sup> *Ibid.*, para. 17.

<sup>3</sup> *Id.*, para. 36.

without pooling. As explained by Fred Williamson and Associates, Inc. (FW&A), the advanced services provided by numerous ILECs via DSL technology,

“...are primarily interstate services whose rates are governed by [NECA]. Revenues for small rural [I]LECs’ interstate broadband services are remitted to the NECA pool, and costs for the broadband services are assigned to and recovered from the NECA pool. Deployment of broadband services in many small rural areas at reasonable rates would not be possible without those [I]LECs having the ability to recover the associated costs from the NECA pool.”<sup>4</sup>

Investment in DSL-capable infrastructure is risky for rural carriers because of low population density<sup>5</sup> and other factors that make service more costly to provision in these markets. Many small ILECs deployed DSL with no reason to believe that pooling might be discontinued in the foreseeable future. Pooling remains necessary in order for them to recover the considerable costs of deployment and continue providing the service.

OPASTCO is highly supportive of appropriate deregulatory measures designed to spur broadband deployment,<sup>6</sup> and applauds the Commission’s efforts to reduce regulatory burdens. Still, it must be remembered that rural carriers that have deployed advanced services did so according to the rules in force at the time, and alterations of those rules will have ramifications. A sudden elimination of DSL-based service from the NECA

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<sup>4</sup> FW&A, p. 2.

<sup>5</sup> See, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, CC Docket No. 98-146, FCC 02-33 (rel. Feb. 6, 2002), para. 35: “[H]igh population density has a strong positive correlation with the presence of high-speed subscribership and low population density has a strong negative correlation.”

<sup>6</sup> See, for example, OPASTCO comments in *Local Competition and Broadband Reporting*, CC Docket No. 99-301, FCC 01-19 (fil. March 19, 2001); OPASTCO comments, *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, FCC 00-297 (fil. Oct. 12, 2000).

pools could require significant rate increases, which might force some consumers of small ILECs to stop utilizing DSL-based advanced services offerings that they currently enjoy. It could also leave these carriers with significant stranded investment and financial losses. Further, pooling carriers would find it far more difficult, and in many cases impossible, to expand DSL-based services to consumers who are located further from the central office. All of these factors would severely discourage additional rural carriers from deploying or expanding advanced services offerings. Obviously, these outcomes would be antithetical to the Commission's goal of encouraging the ubiquitous availability of advanced services to all Americans.<sup>7</sup>

**III. In the event that tariffing requirements are eliminated, an effective pooling mechanism must remain available to small ILECs**

The Commission must consider the needs of both pooling and non-pooling rural ILECs when making any adjustments to the classification and regulatory treatment of ILECs' broadband services. Non-dominant classification will result in fewer regulations, which will likely help some rural ILECs to deploy DSL.<sup>8</sup> Clearly this outcome is desirable. Yet, dissimilar results that would be experienced by other carriers must also be taken into account. Therefore, in the event that tariffing is phased out or eliminated, provisions must be made for some kind of effective pooling mechanism. Any new

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<sup>7</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, CC Docket No. 02-33, CC Docket Nos. 95-20, 98-10, FCC 02-42 (rel. Feb. 15, 2002), para. 3: “First, it is the Commission’s primary policy goal to encourage the ubiquitous availability of broadband to all Americans” (emphasis in the original).

<sup>8</sup> See, generally, comments of Moultrie Independent Telephone Company.

mechanism must be crafted so as to ensure that the pool is sufficient enough to allow the carriers that utilize it to continue providing advanced services to consumers at reasonable rates. Regulatory changes that do not accommodate such a mechanism will thwart the ability of many small ILECs to offer advanced services to their customers.

#### **IV. Conclusion**

Because rural carriers face different operating environments among themselves, OPASTCO encourages exploration of deregulatory measures, while cautioning against overly-precipitous changes that may adversely affect the ability of small ILECs to deploy broadband, or adversely affect current broadband customers of pool participants.

Regardless of the outcome of this proceeding, it is critical that small ILECs continue to have the ability to participate in a viable pool which enables them to provide DSL-based service at reasonable rates. Without the cost-sharing and risk-spreading attributes of pools, many small ILECs will be unable to provide advanced services to their rural consumers, an outcome that is at odds with both the Commission's goals and those of the Telecommunications Act of 1996.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was either hand-delivered or sent by first class United States mail, postage prepaid, on this, the 22<sup>nd</sup> day of April, 2002, to those listed on the attached sheet.

/s/ Vanessa L. Fountain

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